REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks. Applicants sincerely thank the Examiner for holding a telephonic interview with the Applicants' representatives on January 17, 2008. The Examiner's kind suggestions have been incorporated into this response.

I. CLAIM STATUS AND AMENDMENTS

Claims 3, 6 and 8-10 were pending in this application when last examined. Applicants note that the last Office Action indicated that claims 3, 6 and 8-11 were pending. Applicants request the Examiner to indicate the pending claims in the next Office Action.

Claims 3, 6 and 8-10 were examined on the merits and stand rejected.

Claim 3 is amended to recite that "the composition is a single dose with bioequivalence to two administrations of 5-25 mg of efletirizine in an immediate release form given 12 hours apart." Support for this amendment can be found on page 4, lines 8-11, of the specification as filed. "Bioequivalent" is defined on page 8 of the specification.

Claim 10 is amended to correct an obvious typographical error.

Claims 11 -22 are newly added. Support for claims 11-13 can be found on pages 21-22 of the specification as filed. Support for claims 14-22 can be found on page 8, line 31, to page 10, line 5, of the specification as filed.

No new matter has been added.

II. DECLARATION UNDER 37 CFR 1.132

On page 2 of the Office Action, the Office indicated that the Declaration submitted under 37 CFR 1.132 on February 23, 2007, did not overcome the obviousness rejections of record. However, during the above-noted telephonic interview, the Examiner agreed that the Declaration did indicate unexpected results and therefore would overcome obviousness rejections of any claims which are commensurate in scope with the unexpected results shown in the Declaration.

Therefore, Applicants respectfully request the Examiner to reconsider the Declaration under 37 CFR 1.132 submitted on February 23, 2007 in light of the new claims and the amended claims.

III. INDEFINITENESS REJECTION

On page 3 of the Office Action, claim 10 was newly rejected as indefinite for the term "monocrystalline cellulose". This rejection is moot, as applied to amended claim 10, for reasons which are self evident.

IV. OBVIOUSNESS REJECTIONS

On pages 3-6, claims 3, 6, 8 and 9 were newly rejected under 35 U.S.C. 103(a) as obvious over US 5,043,167 in view of DERWENT-ACC-NO 1999-585815, US 5,869,479 and US 3,906,086.

Further, on pages 6-7, claim 10 was newly rejected under 35 U.S.C. 103(a) as unpatentable over US 5,043,167 in view of DERWENT-ACC-NO 1999-585815, US 5,869,479, US 3,906,086 and in further view of US 6,274,168.

These rejections are respectfully traversed as applied to the amended claims for the reasons of record and for the following reasons.

The claimed invention concerns a combination of a fraction which allows immediate release of the active principle with a second fraction which allows prolonged release of the active principle. This combination makes it possible to satisfy the specific pharmacokinetic requirements related to the use of efletirizine and to minimize variations in bioavailability and maximum plasma concentrations associated with having a meal just prior to ingestion of the pharmaceutical. Moreover, after intense research, the present inventors have found the necessary balance between immediate release of the active principle and prolonged release of the active principle for maintaining an effective dose of the active principle bioequivalent to 2 administrations of 5-25 mg of immediate release efletirizine administered 12 hours apart while avoiding reaching plasma concentration peaks associated with side effects. Applicants note amended claim 3 recites this limitation.

As noted in our previous responses, a surprising advantage of the present invention is that combining at least one immediate-release fraction and at least one controlled-release fraction makes it possible to limit or prevent decreases in maximum plasma concentration (C_{max}) and also limit or prevent changes in bioavailability of efletirizine, caused by ingestion of a meal before ingestion of the claimed invention. Such a surprising and unexpected property of the claimed invention is related to the claimed distribution of the active principle between the two fractions. Therefore, the present invention provides for the maintenance of the maximum plasma concentration and of the bioavailability of efletirizine.

The main pharmacokinetic parameters demonstrating that having a meal does not cause the C_{max} to decrease or significantly modify the bioavailability for the claimed compositions are well illustrated by the examples of the present patent application, and concrete results are given in the experimental section.

During the telephonic interview with the Examiner, the Examiner indicated that the unexpected results discussed above and shown in the Declaration of February 23, 2007 were not persuasive because they did not show that the full scope of the claimed invention exhibited the unexpected feature. The Examiner suggested that Applicants amend the claimed invention to conform to the scope of the Declaration.

Claim 3 has been amended to recite that the claimed pharmaceutical composition is bioequivalent to 2 administrations of 5-25 mg of immediate release efletirizine administered 12 hours apart. Applicants note that a person of skill in the art would understand that such a limitation requires that the prolonged release fraction contains one or more excipients with a suitable drug release profile and in a suitable amount to exhibit the claimed bioequivalency. Applicants note that bioequivalency is defined on page 8 of the specification and is well known in the art. Guidance for choosing appropriate excipients is provided on pages 8-10 of the specification. Further, Applicants note that a person of skill in the art would understand that the entire scope of amended claim 3, which is limited to bioequivalence to 2 administrations of 5-25 mg of immediate release efletirizine administered 12 hours apart, exhibits the unexpected resistance to changes in bioavailability and maximum plasma concentrations caused by ingestion of food shown in the Declaration.

Thus, Applicants submit that claim 3 is not rendered obvious by the cited references because the cited references do not teach or suggest the unexpected feature of the claimed invention.

Claim 8, which is dependent on amended claim 3, further limits the scope of the claimed invention to the particular amounts of efletirizine indicated in the Declaration. Thus, the invention of this claim requires one or more excipients in amounts suitable to exhibit the noted bioequivalency with specified amounts of efletirizine. Thus, a person of skill in the art would choose one or more excipients with a suitable drug release profile and in a suitable amount to cause the claimed bioequivalency. Further, a person of skill in the art would understand such compositions all possess the demonstrated unexpected property. Applicants therefore respectfully suggest that the Declaration is commensurate in scope with this claim and therefore the obviousness rejections should be withdrawn.

New claim 11 is dependent on claim 8 and further limits the scope of the claimed invention to a bioequivalency equal to 2 administrations of 15 mg of immediate release efletirizine every 12 hours. Thus, the invention of this claim requires one or more excipients with a suitable drug release profile and in a suitable amount to exhibit this bioequivalency with specified amounts of efletirizine. Applicants therefore respectfully suggest that the Declaration is commensurate in scope with this claim and therefore the obviousness rejections should not be applied to this claim.

New claims 12-13 also are not rendered obvious by the cited references for the above noted reasons.

New claims 14-22 further limit the claimed excipients. Such claims are also not rendered obvious by the cited references for the above noted reasons.

For the above noted reasons and the reasons of record, including the Declaration submitted under 37 CFR 1.132 on February 23, 2007 showing unexpected results for the claimed invention, Applicants respectfully suggest that the above noted obviousness rejections, as applied to the amended claims, are untenable and should be withdrawn.

CONCLUSION

In view of the forgoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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